

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 16th day of February, two thousand twelve.

PRESENT:

RICHARD C. WESLEY,
SUSAN L. CARNEY,
Circuit Judges,
MIRIAM GOLDMAN CEDARBAUM,
*District Judge.**

JOHN W. LEVERMORE,

Plaintiff-Appellant,

v.

10-4900-cv

ANANDA DESILVA, THE ESTATE OF MACIO
JACKSON, KARLA M. SCOTT, EXECUTRIX,

Defendants-Appellees.

FOR APPELLANT: Walter Theodore Charlton, Woodsboro, MD.

FOR APPELLEES: *Pro se*

*Judge Miriam Goldman Cedarbaum, of the United States District Court for the Southern District of New York, sitting by designation.

1 FOR *AMICUS CURIAE*: Samantha B. Lansky, Milber, Makris, Plousadis
2 & Seiden, LLP, Woodbury, NY.

3
4 Appeal from a judgment of the United States District Court
5 for the Eastern District of New York (Feuerstein, J.).

6 **UPON DUE CONSIDERATION IT IS HEREBY ORDERED, ADJUDGED, AND**
7 **DECREED** that the judgment of the district court be **AFFIRMED**.

8 Plaintiff-appellant John W. Levermore appeals from the
9 district court's October 2010 grant of summary judgment in favor
10 of Ananda DeSilva and the Estate of Macio Jackson and denial of
11 joinder of Joseph Albano and the Internal Revenue Service. We
12 assume the parties' familiarity with the underlying facts and
13 procedural history of this case.

14 We review orders granting summary judgment *de novo*. *Miller*
15 *v. Wolpoff & Abramson, LLP*, 321 F.3d 292, 300 (2d Cir. 2003).
16 Summary judgment is appropriate only if the moving party shows
17 that there are no genuine issues of material fact and that the
18 moving party is entitled to judgment as a matter of law. *Id.*

19 The district court did not err in finding that there are no
20 genuine issues of material fact relating to the timeliness of
21 Levermore's fraud claims. Under New York's statute of
22 limitations, a fraud claim is time-barred if it is brought more
23 than six years after the commission of the fraud unless it is
24 brought within two years from the time the plaintiff "discovered
25 the fraud, or could with reasonable diligence have discovered
26 it." NY CPLR § 213(8). Levermore's fraud claims relate to

1 events in 1999 and 2000, but he did not file suit until 2008. He
2 argues that the district court should have tolled the limitations
3 period because defendants' actions prevented him from discovering
4 defendants' fraud. *Cf. SEC v. Gabelli*, 653 F.3d 49, 59-60 (2d
5 Cir. 2011).

6 Equitable tolling, however, is not appropriate where a
7 plaintiff does not act with reasonable diligence. *Ross v. Louise*
8 *Wise Servs., Inc.*, 8 N.Y.3d 478, 517-18 (2007); *see also Johnson*
9 *v. Nyack Hosp.*, 86 F.3d 8, 11-12 (2d Cir. 1996); *Dodds v. Cigna*
10 *Secs., Inc.*, 12 F.3d 346, 350 (2d Cir. 1993).

11 The district court properly concluded that there was no
12 genuine issue of material fact because Levermore was aware of the
13 basic facts—the transactions he now argues are fraudulent—between
14 2000 and 2003. Because Levermore could have investigated at that
15 time but did not do so, he failed to act with the diligence
16 necessary for equitable tolling. *See Johnson*, 86 F.3d at 12.
17 Accordingly, the district court properly denied Levermore's fraud
18 claims as time-barred.

19 Levermore does not challenge the district court's dismissal
20 of his contract claims for failure to meet the amount in
21 controversy required for diversity jurisdiction.

22 Accordingly, the judgment of the district court is AFFIRMED.

23 FOR THE COURT:
24 Catherine O'Hagan Wolfe, Clerk